

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 68**

**[OAR-2003-0044; FRL-7643-6]**

**RIN 2050-AF09**

**Accidental Release Prevention Requirements: Risk Management Program Requirements  
Under Clean Air Act Section 112(r)(7); Amendments to the Submission Schedule and Data  
Requirements**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final Rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is making several changes to the reporting requirements of its chemical accident prevention regulations under section 112(r) of the Clean Air Act. Today's final rule requires that, beginning June 21, 2004, chemical facilities subject to the accident prevention regulations submit information on any significant chemical accidents and any changes to emergency contact information on a more timely basis than previously required. The rule also immediately removes the regulatory requirement for covered facilities to include in the executive summaries of their risk management plans (RMPs) a brief description of the off-site consequence analysis (OCA) for their facilities. In addition, the final rule also requires that, beginning June 21, 2004, covered facilities include three new pieces of information in their RMPs: the e-mail address for the facility emergency contact, the name, address and telephone number of the contractor who prepared the RMP, and the purpose of any RMP submission that changes or otherwise affects an earlier RMP submission. The rule also clarifies that the deadline for updating RMPs that were submitted before or on June 21, 1999, is June 21, 2004, except for those facilities required to update their RMPs as a result of changes at

the facility. Finally, EPA is making several related and other revisions to the format for submitting RMPs (RMP\*Submit), including expanding the list of options for possible accident causes to include uncontrolled chemical reactions. The modifications promulgated today seek to improve the accident prevention and reporting programs of covered facilities, and to assist federal, state, and local RMP implementation in light of new homeland security concerns.

**DATES:** This rule is effective on [insert date of publication in the Federal Register].

**ADDRESSES:** See SUPPLEMENTARY INFORMATION section I.B for docket addresses.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the Emergency Planning and Community Right-to-Know Hotline at (800) 424-9346; in the Washington, D.C. metropolitan area, contact (703) 412-9810. The Telecommunications Device for the Deaf (TDD) Hotline number is (800)535-7672. You may also access general information online at the Hotline Internet site, <http://www.epa.gov/epaoswer/hotline/>. For questions on the contents of this document contact Vanessa Rodriguez, Chemical Emergency Preparedness and Prevention Office, Mail Code 5104A, U.S. EPA, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20004, (202)564-7913, Fax (202) 564-8233, [rodriguez.vanessa@epa.gov](mailto:rodriguez.vanessa@epa.gov). You may also wish to visit the Chemical Emergency Preparedness and Prevention Office (CEPPO) Internet site at <http://www.epa.gov/ceppo>.

## **SUPPLEMENTARY INFORMATION:**

### **I. General Information**

#### **A. What are the Affected or Regulated Entities?**

Entities potentially affected by this action are those facilities (referred to as “stationary sources” under the CAA) that are subject to the chemical accident prevention requirements at 40

CFR part 68. Affected categories and entities include:

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**CATEGORY EXAMPLES OF AFFECTED ENTITIES**

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Chemical Manufacturers.....	Basic chemical manufacturing, petrochemicals, resins, agricultural chemicals, pharmaceuticals, paints, cleaning compounds.
Petroleum.....	Refineries.
Other Manufacturing.....	Paper, electronics, semiconductors, fabricated metals, industrial machinery, food processors.
Agriculture.....	Agricultural retailers.
Public Sources.....	Drinking water and waste water treatment systems.
Utilities.....	Electric utilities.
Other.....	Cold storage, warehousing, and wholesalers.
Federal Sources.....	Military and energy installations.

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This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether a stationary source is affected by this action, carefully examine the provisions associated with the list of substances

and thresholds under 40 CFR 68.130 and the applicability criteria under §68.10. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding "FOR FURTHER INFORMATION CONTACT" section.

## **B. How Can I Get Copies of This Document and Other Related Information?**

**1. *Docket.*** EPA has established an official public docket for this action under Docket ID No. OAR-2003-0044. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**2. *Electronic Access.*** You may access this *Federal Register* document electronically through the EPA Internet under the "*Federal Register*" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket

identification number.

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## **I. Introduction**

### **A. Statutory Authority**

This final rule is being issued under section 112(r) of the Clean Air Act (CAA or Act) (42 U.S.C. 7412).

### **B. Background**

The 1990 CAA Amendments added, among other things, section 112(r) to provide for the prevention and mitigation of accidental releases of extremely hazardous substances. Section

112(r) calls for EPA to list the most dangerous substances and a threshold quantity for each substance. It also directs EPA to issue regulations requiring any stationary source with more than a threshold quantity of a listed substance to develop and implement a risk management program and to submit a RMP describing its program. EPA published a final rule creating the list of regulated substances and establishing thresholds on January 31, 1994 (59 FR 4478) (the “List Rule”), and a final rule establishing the risk management program and plan requirements on June 20, 1996 (61 FR 31668) (the “RMP Rule”). Together, these two rules are codified as part 68 of title 40 of the Code of Federal Regulations (40 CFR part 68).

Sources subject to the RMP rule are required to develop and implement a risk management program that includes, for covered processes, a five-year accident history, an offsite consequence analysis, a prevention program, and an emergency response program. Sources must also submit to EPA a RMP describing the source’s risk management program. The deadline for submitting RMPs was June 21, 1999, for sources subject to the rule by that date. Sources must also update their RMPs at least every five years. Approximately 15,000 sources have submitted RMPs, and a significant number of those sources have their five-year anniversary date coming up in June, 2004.

Specifically, the RMP rule requires sources to *update and re-submit* their RMPs at least every five years or sooner if any of the changes specified in §68.190(b)(2) of the rule occur. Updates and re-submissions entail the review and revision of all sections of the RMP as needed to bring the RMP up to date and must be accompanied by a letter certifying that the entire RMP is true, accurate and complete. The five-year anniversary date for resubmitting the RMP is reset with any update and re-submission.

Sources may revise their RMPs for reasons other than those that trigger an update and re-submission. The Agency distinguishes between *updates and re-submissions* and other types of revisions, namely *corrections*, *de-registrations (revised registrations)* and *withdrawals*. A *correction* changes only individual data entries in the RMP (known as “RMP data elements”). Corrections may include clerical errors, minor administrative changes, or changes of ownership when covered process operations do not change. Corrections do not entail the review and revision of all nine sections of the RMP, nor do they affect the five-year anniversary date for updating and resubmitting the RMP. Corrections have entailed submission of the corrected RMP on a diskette (or in hard copy) accompanied by a letter certifying the change. EPA is currently working on an alternative, Internet-based, secure system that would allow corrections of administrative data elements within the RMP registration to be made more easily.

*De-registrations* (or *revised registrations* as these are referred to in §68.190(c)) occur when the source is no longer covered by the program (e.g., the source no longer uses any regulated substances or no longer holds regulated substances in amounts that exceed the threshold quantities). The source submits a letter requesting de-registration, with the RMP being retained in the reporting system database for 15 years. *Withdrawals* occur when sources that were never subject to the program submit an RMP in error. A letter requesting a withdrawal is submitted, and the RMP is taken out of the reporting system database.

## **II. Discussion of the Final Rule and Public Comments**

With this final rule, EPA is taking action to amend several of the reporting requirements of the chemical accident prevention regulations. EPA is requiring any source at which a significant accident occurs following the effective date of this rule to add information about that



accident and the resulting incident investigation to the source' RMP within 6 months of the accident. EPA is not, however, requiring that a source necessarily update and resubmit its RMP following such an accident. EPA is also requiring sources which change emergency contact personnel or related information to correct the corresponding information in their RMP within one month of making the change. EPA is removing the regulatory requirement to briefly summarize OCA in the executive summary of the RMP. In addition, EPA is adding three mandatory data elements to the RMP: (1) the e-mail address for the facility emergency contact, when available, (2) the purpose of any subsequent RMP submissions (e.g., correction, update, withdrawal), and (3) the name, address and telephone number of any contractor who helped prepare the RMP. EPA is also allowing an optional data element for the e-mail address of the facility person responsible for the RMP. Relatedly, EPA is making several revisions to the submission format for the RMP (RMP\*Submit), including expanding the list of options for possible accident causes to include uncontrolled chemical reactions.

These changes were proposed on July 31, 2003 (68 FR 45126). EPA received 71 comments on the proposal. Summaries of all comments and the Agency's responses can be found in the *Summary and Response to Comments* document in the docket.

## **A. Changes to the RMP Reporting Schedule**

### **1. Five-Year Accident History**

*EPA is amending the RMP rule to require that facilities who have an accident that meets the criteria for the five-year accident history revise all elements of their RMP accident history (§68.168) and the date of investigation and expected date of completion of changes due to an accident investigation in their Incident Investigation data elements*

*(§§68.170(j) and 68.175(l)) within six months of the date of the accident.*

The five-year accident history section of the RMP rule (40 CFR 68.42) requires the owner or operator of a covered source to record information in their RMP on all accidental releases from covered processes in the past five years that resulted in deaths, injuries, or significant property damage on site, or known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage. However, the original RMP rule did not require a source to update its accident history until it updated and re-submitted its entire RMP, which could be as infrequently as every five years. One year ago, the U.S. Chemical Safety and Hazard Investigation Board (CSB), created under section 112(r)(6) of the CAA, recommended that RMP accident histories be updated on a more timely basis in view of the valuable information they provide for chemical accident prevention and preparedness efforts by government, industry and the public (Joint Chemical Safety Board, Occupational Safety and Health Administration, National Institute for Occupational Safety and Health, and EPA Roundtable on Developing Improved Metrics on Accidental Chemical Process Releases, November 14, 2002). EPA agreed with that recommendation and consequently proposed to require that sources update and re-submit their RMP within six months of an accidental release that meets the five-year accident history reporting criteria. The Agency also requested comment on requiring all sources with reportable accidents to update and resubmit their RMPs by the same date (e.g., June 1 of each year).

Thirteen comments supported the proposal for a full update and re-submission of the RMP after an accident that met the accident history reporting criteria, while 43 comments opposed all or part of the proposal. Comments supporting the proposal stated that it would not

pose a substantial burden to the regulated community, and that timely submission of accident information in RMPs would be beneficial in assisting federal, state, and local responders with accident prevention and response. These comments generally favored requiring an update and re-submission within some number of months following an accident, as opposed to requiring every source to update and resubmit their RMPs by a fixed date.

Other comments opposing the proposal pointed out that many accidents are subject to other reporting requirements, making timely RMP reporting arguably unnecessary. Many comments also disagreed with the need to update and re-submit an entire RMP following any reportable accident. In proposing the update and re-submission requirement, EPA explained that it sought not only more recent accident information in RMPs but also assurance that any lessons learned from an accident investigation would be applied to the source's risk management program and reflected in its RMP. A number of comments noted, however, that the RMP rule already requires the vast majority of RMP facilities to (1) investigate incidents that result in, or could have resulted in, catastrophic releases; (2) prepare a summary or report of the investigation, including a description of the incident, factors that contributed to the incident and any recommendations resulting from the investigation; (3) address and resolve all findings and recommendations; and (4) document all resolutions and corrective actions taken (see §§68.60 and 68.81). These comments argued that these existing requirements already accomplished EPA's goal of sources incorporating lessons learned into their risk management programs. The comments also noted that to the extent sources made changes in light of accidents that triggered the update requirement of the existing rule, the RMP would be updated and re-submitted in that event.

Several comments also stated that RMP reporting is not detailed enough to capture many of the changes a source might make in response to an accident investigation. In addition, some comments noted that for a source with more than one RMP-covered process, an accident involving one process may have no implications for other, different processes at the source. For such sources, a requirement to update and re-submit the RMP for all processes would make little sense. There was also concern that six months is not a sufficient amount of time to update and resubmit an entire RMP following an accident that may take several months or more to fully investigate. Finally, a number of comments expressed concern with a statement in the preamble to the proposed rule suggesting that reporting would be required for significant releases from covered processes of any extremely hazardous substance, not just a substance listed under CAA section 112(r) (“regulated substances”). A number of comments argued that EPA had overstated the scope of the existing reporting requirement.

EPA has considered the comments and further studied existing requirements for accident reporting and follow-up. The Agency continues to believe that more timely reporting of significant accidents in RMPs is worthwhile. Although there are a number of other federal, state and local requirements for accident reporting, the data collected for accident reporting in RMPs are uniquely useful and accessible. RMP accident history reporting provides more than basic information about an accident; it also covers the cause of the release and measures taken to reduce the risk or consequences of a reoccurrence. The data consequently help in understanding the reason(s) for a release and safety measures that have been taken in response. Moreover, the RMP accident histories are available by law to federal, state and local officials and the public, including other chemical sources.

EPA believes significant benefits will accrue as accident histories are reported on a more timely basis, as lessons learned are more promptly shared and acted upon to prevent similar occurrences. Implementing agencies will be able to better identify the need for technical assistance, and more timely accident information will help in identifying trends and providing timely outreach to prevent similar incidents. As noted above, more timely reporting was also recommended by the CSB. Those recommendations were particularly aimed at improving our understanding of the frequency, nature, and causes of reactive chemical incidents, and ultimately to promote safer management of reactive chemicals. EPA believes more timely reporting of accident history information, along with other modifications made in today's final rule, will allow the Agency, other government agencies, members of the public, and other interested parties to better understand and prevent chemical accidents, including those resulting from reactive chemicals.

While EPA is establishing a requirement for more timely reporting of significant accidents, it is not adopting the proposed requirement that RMPs be fully updated and resubmitted within six months of an accident. The Agency understands the concern that a full update of an RMP may not be possible within six months of an accident, as a thorough investigation of a major accident, implementation of any new safety measures and updating of the entire RMP could take longer, particularly for larger sources. EPA also agrees with the comments that existing requirements for incident investigations already accomplish the Agency's primary purpose in proposing a full update and re-submission requirement – assurance that lessons learned are applied. EPA further recognizes that updating an RMP in full may make little sense where an accident involves only one process at sources with other, different

processes. The Agency has accordingly decided not to require a full update and re-submission of an RMP following an accident.

At the same time, EPA is requiring that information about reportable accidents be added to RMPs within six months of the accident (unless an RMP update is required sooner). The Agency continues to believe that facilities will be more likely to recall and report accurate accident history information if that information is recorded within six months of an accident. Under the previous reporting requirement facilities were asked to include in their RMPs detailed information about an accident that occurred as long as five years ago. While some comments expressed concern that accident investigations and implementation of corrective actions could take longer than six months in some cases, the existing accident history data elements take into account that a source may not have complete information at the time a report is made. Section 68.42(b) of the RMP rule requires information about weather conditions, offsite impacts, initiating event and contributing factors “if known” and only an “estimate” of the quantity of chemical released. To the extent complete information about these matters is not available six months after a reportable accident occurs (or by the time an RMP update is due, if earlier), the source need only provide the information it does have. When the source is next required to update and resubmit its entire RMP, it can and must provide any additional or more accurate information at that time.

The Agency recognizes that §68.42(b)(11) as originally drafted required a source to report “operational or process changes that resulted from investigation of the release,” and that a source may not have made all such changes by the time it must submit information about the accident. EPA is thus revising that data element to require reporting of only those changes the

source has made by the time it submits the accident information as part of accident reporting or an RMP update. EPA recognizes that providing a longer time frame for accident reporting would make it more likely that complete information would always be available at the time a report is made. But the Agency believes it is important to collect accident information as soon as reasonably practicable, even if that information is not always complete, in view of the benefit such information may provide to other entities that could learn from the accident. A six-month deadline for reporting accident information is a reasonable compromise between the time facilities generally need to investigate and learn from an accident and the public interest in obtaining accident information quickly. Sources that make additional accident-related changes after submitting accident information can and must report on those changes when the their next scheduled RMP update is submitted.

Relatedly, the Agency is requiring that the addition of new accident history information to an RMP be accompanied with corrections to two other RMP data elements: the date of the source's most recent incident investigation and the expected date of completion of any changes resulting from the investigation (§§68.170(j) and 68.175(l)). As noted above, a number of comments pointed out that requiring a full update and re-submission of an RMP was not necessary to ensuring that lessons learned from an accident were applied, given the existing requirement that sources investigate and learn from any incident that "resulted in or could reasonably have resulted in a catastrophic release." EPA agrees with this comment and its premise – that accidents subject to the reporting requirement of the RMP rule trigger the incident investigation requirements of the rule. As described above, those requirements ensure that significant incidents are thoroughly investigated and documented, and any lessons learned

identified and applied. EPA therefore expects that a source experiencing a reportable accident will follow-up with an incident investigation that may in turn lead to changes that address the cause or consequences of the accident. Six months following the accident, the source should be able to provide accident history information as well as the date of its incident investigation and the expected date of completion of any changes. A source need not be sure of when changes will be complete or even if particular changes will ultimately be made to provide a reasonable “expected” date for completion of “any” changes.

The Agency also agrees with the comment that an incident investigation may well trigger existing requirements for an update and re-submission of the RMP under §68.190 of the rule, and that this would then be the appropriate route for a facility update in the aftermath of an accidental release. Other avenues or types of reporting that were suggested (i.e., 8-hour reporting, accident reports, accident fact sheets, separate accident databases, attachments to current RMPs) where all focused on avoiding a full RMP update and re-submission. The Agency believes that by not requiring a full update and instead requiring only submission of new accident information, it has addressed the concern behind those suggestions.

The Agency also agrees with the comments preferring a specified time frame (such as six months) following an accident over a fixed date for sources to submit new accident information. A fixed calendar date could result in sources being required to submit information shortly after an accidental release, before they have had time to investigate or make any changes in response to the accident. That approach would not be advantageous either for the sources or for those interested in the accident data.

The Agency acknowledges the concerns raised about the preamble statement that



accident history reporting is required for significant releases from covered processes for all extremely hazardous chemicals, not just chemicals listed under CAA section 112(r). EPA notes that the relevant regulatory language can be interpreted to reach accidents involving extremely hazardous substances in addition to those listed. Section 68.42 of the RMP rule requires reporting of “accidental releases” meeting certain criteria, and section 112(r)(2)(A) of the CAA and section 68.3 of the rule define an “accidental release” as a release of a substance regulated under CAA section 112(r) “or any other extremely hazardous substance.” The Agency recognizes, however, that its “General Guidance” for meeting RMP rule requirements has specified that reportable accidents are those involving regulated substances. Interpreting the rule to require reporting of all releases of extremely hazardous substances from covered process would allow the Agency and others to look at trends with respect to chemicals, and provide information that could be useful in amending the list of regulated substances. An example of how broader reporting could be useful was highlighted by a comment that concerned catastrophic reactive/dust explosion accidents, not currently covered by the RMP rule because the involved substances are not listed. However, in light of the guidance provided previously and in order to avoid confusion, the Agency agrees it is best to retain for now the current interpretation for reporting only accidents involving regulated substances. EPA, however, may revisit this issue in a future rulemaking.

This final rule establishes a new schedule for any source experiencing a reportable accident to include in its RMP information for all the elements of the five-year accident history as set forth in §68.42 of the RMP rule, as well as the date of an incident investigation and the expected date of completion of any changes triggered by an incident investigation as required by

§§68.170(j) and 68.175(l) of the RMP rule. Because the Agency is no longer requiring a full update and re-submission of the RMP, these requirements should not significantly change the associated burden. If a source had a reportable accident, it would need to revise those elements of its RMP within six months; the source would not need to update its entire RMP unless the accident led to a change triggering the existing update requirement.

## **2. Emergency Contact Information**

*EPA is amending the RMP rule to require that facilities correct their emergency contact information within one month of a change in the information.*

The RMP database has become an important source of information for federal, state and local government efforts in the homeland security area. Many RMP sources are considered part of the nation's critical infrastructure or are otherwise important to protecting homeland security. All levels of government use the database to help assess security needs and to obtain emergency contact information.

Under current requirements, a change may occur in a facility's emergency contact information (for example, the emergency contact's phone number is changed or the emergency contact leaves the position), and the facility may have up to five years to report these changes in its RMP. Implementing agencies that have audited RMPs report that much of the information for emergency contacts is outdated or otherwise inaccurate. In light of the importance of this information, EPA proposed to require that facilities correct their emergency contact information within one month of a change in the information.

Seventeen comments indicated support for this proposal, while 12 comments opposed all or part of it. Supporters argued that keeping emergency contact information current was

valuable to ensuring a timely response to an accidental release, and was particularly critical to emergency planning and response. Some comments also suggested similar correction requirements for other administrative information in the RMP. Comments highlighted how emergency responses are less efficient without current emergency contact information, how any delay in access to current facility information can have catastrophic impacts on first responders, and how this requirement would not pose an undue burden on reporting facilities.

While some comments opposing this requirement argued that corrections to contact information were unnecessary, most were focused on the timing of these corrections, arguing for the most part for a longer period of time. These comments stated that it can take longer than 30 days to assign new staff to vacancies, that the proposal would be unduly burdensome and would subject facilities to possible non-compliance with every personnel change, and that the facility contact person can actually change routinely based on employee turnovers, promotions, and relocations, making the administrative burden and potential liability of the current proposal outweigh its benefits. Arguments were made for alternative means of correcting this information, for example through a secure internet-based site. Some comments also urged that EPA require reporting of only the emergency contact position versus the name of the individual filling that position.

The Agency agrees with comments that RMP emergency contact information is important to emergency planning and response efforts at the federal, state and local levels, particularly for facilitating the work of first responders and safeguarding the community. It is therefore important that the information be kept as up-to-date as possible.

The Agency appreciates that, currently, even small corrections of RMPs require sources

to send EPA a diskette containing the entire RMP (with the corrected information) and a certification letter attesting to the accuracy of the corrected information. To ease the burden of making such changes, including changes to emergency contact information, EPA is working to make available a secure means for making administrative corrections over the Internet. Sources that need to make such corrections will be allowed secured access to non-sensitive pieces of RMP information, including much of the information in the registration part of the RMP (section 1).

As this electronic system for making corrections to emergency contact information is made available, the time and resources needed to make a correction should not be significant. Although timely updates to all basic registration information would be beneficial as well, the need for updates is most urgent in the case of emergency contact information. EPA encourages sources to update all of the information in their RMPs as changes are made, but the Agency does not want to add unduly to the reporting burden of the program. Sources' efforts are best focused on maintaining the accuracy of key information in their RMPs, so EPA is not adding other data elements to the requirement to correct emergency contact information.

The Agency disagrees with the comment that some emergency contact information, including the name of the emergency contact person, need not be reported at all. The Agency believes that action at the local level is most important in preparing for, preventing, and responding to accidents, and that the name of the emergency contact person, as opposed to the name of the position or more general corporate information, is a key piece of information for such local efforts. Common sense suggests that it is easier to reach a named individual than an unknown person filling a particular position. Unless whoever answers the phone or email at a

source knows who fills the emergency contact position, it could take several more phone calls to reach the emergency contact person himself. In the event of an accidental release or other emergency, the extra time required to reach the emergency contact person could be costly. EPA is thus retaining the requirement that sources supply the name of the emergency contact person and is requiring the correction of that name within one month of a change. The Agency recognizes that personnel changes may sometimes take longer than a month, but in that event it expects the source to have assigned the responsibility to someone in the interim. Given the electronic means of correcting such information expected to be available, EPA believes it is reasonable to require facilities to keep this information relatively current, even if that means supplying the name of an interim emergency contact person until a permanent person is in place.

Even with a requirement to correct emergency contact information within one month of a change, that still leaves RMP emergency contact information potentially outdated for as much as a month. EPA is concerned that the 24-hour emergency phone number provided in the RMP is a key element of emergency contact information that should be corrected as soon as possible after it changes. The Agency strongly encourages sources to ensure that their 24-hour emergency number continues to reach someone able to address emergencies even after an emergency contact person leaves that position. Ideally, the 24-hour emergency number would remain the same indefinitely, regardless of who fills the emergency contact position or any other position at the facility.

This final rule establishes a new requirement to correct the emergency contact information within one month of a change in the information. The Agency expects that while changes are ongoing at the facility, the basic phone number information provided should

continue to be available, routed as appropriate, so that facilities always have a current 24-hours-a-day, 7-days-a-week means for emergency contact.

## **B. Changes to Executive Summary**

*EPA is amending the RMP rule to remove the requirement for sources to briefly describe the off-site consequence analysis (i.e., worst-case accidental release scenario(s) and the alternative accidental release scenario(s)) within the executive summary of the RMP.*

CAA section 112(r)(7) and the chemical accident prevention regulations require sources subject to the RMP rule to conduct an off-site consequence analysis (OCA) for one or more hypothetical accidental worst case and alternative release scenarios and report the results of the analysis in the RMP. The Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (CSISSFRRRA) of 1999 governs the distribution of “off-site consequence [OCA] information,” defined as those portions of an RMP, excluding the executive summary, that contain the results of the OCA for the source submitting the RMP. Under CSISSFRRRA, EPA and the Department of Justice jointly issued regulations at 40 CFR part 1400 restricting public access to OCA information and certain related information to government reading rooms.

Section 68.155(c) of the RMP rule as originally drafted required sources to briefly describe in their RMP executive summary “the worst-case release scenario(s) and the alternative release scenario(s), including administrative controls and mitigation measures to limit the distances for each reported scenario.” EPA, along with federal law enforcement agencies, now believes that due to its sensitive nature, this information should no longer be included in executive summaries, which are not subject to the access restrictions of the CSISSFRRRA regulations. Consequently, EPA proposed to remove the requirement to summarize OCA results

in the executive summary.

Forty comments supported removing this requirement, several noting national and facility security concerns. Several comments opined that the information is too sensitive to be easily accessible to the public. Four comments opposed the proposal as written, noting that more ready public access to OCA information would help stimulate greater safety efforts on the part of facilities and the communities in which they are located. Eight comments presented recommendations, requested clarification, or had other comments about the proposed changes.

The Agency continues to believe that the requirement for briefly describing OCA in executive summaries should be removed in the face of ongoing concerns about the potential misuse of such information by terrorists, particularly if the information can be easily and anonymously accessed. Removing this requirement will not affect the controlled public access currently available to OCA information under the CSISSFRRA regulations. Sources must continue to provide details of their OCA in Sections 2 through 5 of the RMP, and the public will continue to have the access to OCA information afforded by the regulations at 40 CFR part 1400. The Agency also agrees with the comment that removing OCA data from executive summaries would reduce or eliminate any risk that Internet posting of executive summaries might pose.

The Agency agrees that OCA information provides a context for each RMP submission by providing a rough estimate of the risk the facility could pose to the community in the event of an accidental release. But EPA disagrees that this information would be lost over the years if it is removed from executive summaries. Complete OCA results are reported in Sections 2 through 5 of facilities' RMPs, and the Agency maintains a database including all RMPs submitted since 1999 (except for RMPs submitted and then withdrawn by facilities that were never subject to the

program). As noted above, the public will continue to have access to OCA information in RMPs in the manner provided by the CSISSFRRA regulations.

The Agency disagrees with the comment that executive summaries are not available to the public. CSISSFRRA and its implementing regulations impose restrictions on Sections 2 through 5 of the RMP only, and expressly exclude executive summaries from the portions of RMPs that can be restricted. CSISSFRRA was enacted several years after EPA issued the RMP regulations requiring a brief description of OCA in executive summaries, so Congress was presumably aware that executive summaries would contain some OCA data when it excluded executive summaries from the information that CSISSFRRA regulations could restrict. At the same time, EPA disagrees that Congress' decision to exclude executive summaries from coverage by CSISSFRRA precludes EPA from removing the regulatory requirement to include a brief description of OCA in executive summaries. Congress' exclusion of executive summaries from CSISSFRRA restrictions does not amount to a congressional directive for EPA to continue requiring OCA descriptions in executive summaries. CSISSFRRA was enacted prior to the September 11, 2001 terrorist attacks, which heightened concerns about the potential misuse of detailed OCA data found in some executive summaries. The Departments of Justice and Homeland Security have advised against the continued inclusion of OCA data in executive summaries, and EPA agrees that recent events make it imperative to remove the requirement for including this information.

One comment suggested that instead of removing the requirement altogether, EPA provide guidance on how to briefly describe OCA in executive summaries without including sensitive information. EPA agrees that such guidance could help, but believes that removing the



requirement altogether will be more effective in removing sensitive information from the summaries. Any guidance EPA could issue would not necessarily come to the attention of, or be followed by, every RMP facility, thus risking the continued inclusion of OCA data in executive summaries. Another comment suggested including a summary of OCA results in the restricted OCA sections of the RMP, but EPA believes little would be accomplished by including a summary there. The OCA sections of the RMP are designed to be easily understood and reviewed, so providing a summary within those sections would serve little purpose. EPA intended executive summaries to provide an overview of the entire RMP, including the OCA sections. Since EPA has judged OCA descriptions in executive summaries to be unwise, there is no point in including a summary of OCA results in any other part of the RMP.

EPA is not forbidding sources from including OCA data in executive summaries, as some comments suggested. The Agency expects, however, that in view of the concerns cited, sources will not include any OCA data in their executive summaries.

The Agency agrees with comments that the OCA information should continue to be made readily available to covered persons, an important group of which are state and local emergency responders. This information will continue to assist in developing effective plans for accident prevention and emergency response. The Agency continues to work closely with the Department of Justice and with the Department of Homeland Security to ensure the best balance between providing public information and protecting national security.

This final rule removes the requirement for sources to briefly describe the OCA conducted for their facilities in the executive summary of the RMP.

### **C. New Data Elements**

## **1. Emergency Contact's E-mail Address**

*EPA is amending the RMP rule by adding a mandatory data element to the RMP for sources to provide the e-mail address (if any) for the emergency contact.*

Under §68.160(b)(6) of the RMP rule as originally drafted, sources were required to provide the name, title, telephone number, and a 24-hour telephone number of the person who serves as the source's emergency contact, with no provision, optional or otherwise, for sources to provide an e-mail address for that person. Having an e-mail address for the emergency contact would allow the Agency to quickly and directly communicate hazard information, improving sources' access to critical process safety information. Additionally, it might become necessary for an RMP implementing agency to communicate directly and on short notice with sources subject to the RMP program, or with a portion of that universe, as RMPs have become a critical source of information for the federal government's homeland security efforts. For these reasons EPA proposed that sources provide the e-mail address for the source's emergency contact when available, and that any change to the email address be followed by a correction to the source's RMP within a month of the address change.

Twenty-two comments supported adding a mandatory data element for emergency contact e-mail addresses. A number of comments noted that this requirement would enhance communication between implementing agencies and reporting facilities and facilitate coordination and training with first responders without posing an undue burden on the reporting facilities. Comments suggested that similar access to the e-mail address of the person at the source with overall risk management program responsibility would also be helpful to agencies. Ten comments opposed adding this as a mandatory data element. Arguments included the fact

that not all facilities have e-mail; that e-mail may not be the most reliable means of communicating with a facility, particularly in emergency situations; and that this field would be very cumbersome to maintain as an updated distribution list.

The Agency believes that access to emergency contact e-mail information will provide an advantage to the regulated community, implementing agencies, and emergency planners and responders alike. Improved communications, and a variety of avenues to facilitate them, will allow for improved exchange of critical emergency planning and accident prevention and hazard information of benefit to all. E-mail is an excellent tool for distributing information to a large audience quickly. Although keeping e-mail address information up-to-date will require some effort from all parties involved, the benefits of having that information will outweigh the effort. The Agency agrees with comments that e-mail should not be the only vehicle that the Agency relies upon, particularly in cases of emergencies. However, it is certainly one of the most immediate and common means of communications used today, and will serve as an important component for information dissemination, along with mail and telephone communications. Since not every source has e-mail, the Agency is requiring only those sources with existing e-mails to submit this information. It is not the intent of this requirement to allow for unnecessary use of the e-mail address. To guard against the use of the address for distribution of spam or junk mail, the Agency does not plan to issue a list of facilities' e-mails.

The Agency agrees that e-mail to a single emergency contact may not be appropriate for all communications; other forms of communications, such as mail, phone, or through trade groups, will continue to be used by the Agency and other implementing agencies. The current RMP rule also requires the e-mail address for the source or parent company. This address, in

conjunction with the emergency contact e-mail address and the optional RMP responsible person e-mail address, will provide additional means to quickly contact RMP facilities. In response to suggestions that EPA obtain the e-mail address for the person responsible for the source's RMP as a better choice for receiving e-mailed information, the Agency will provide a field in RMP\*Submit for facilities that have such an e-mail address to provide that information at their option.

This final rule, therefore, requires that RMP facilities provide the e-mail address for the facility emergency contact, and that this information is corrected within one month of a change. The e-mail address for the person responsible for the facility RMP will be an optional field in RMP\*Submit. As with the other emergency contact information correction requirements, the Agency intends to implement a system that would allow facilities to correct this and other administrative information via a secure web site, and is working to implement such a system as soon as practicable.

## **2. Purpose of Subsequent RMP Submissions**

*EPA is amending the RMP rule to add a mandatory data element for sources to identify the purpose of submissions that revise or otherwise affect their previously filed RMPs.*

As noted above, sources are required to submit, update and resubmit their RMP by the schedule specified in §68.190 of the RMP rule. Since the initial June 1999 reporting deadline, EPA has received thousands of submissions containing corrections, re-submissions, de-registrations (revised registrations) or withdrawals of previously submitted RMPs. However, the RMP electronic submission program has not had an entry that provides the reason for the submission. To assist EPA and other implementing agencies in understanding the reason for a

submission, EPA proposed a new data element in the RMP for sources to indicate what they are submitting and why. The Agency also requested comment on whether to replace the term *revised registrations* with *de-registration*, which more clearly conveys the action being taken and is the term used in the implementation materials for the RMP rule.

Twenty-five comments indicated support for the proposal, and four comments raised objections to it. Comments in support argued this data element would streamline the submission process by expediting the review and evaluation of the RMP by both EPA and state and local implementing agencies. Comments in support argued this requirement would enable all users of RMP data to understand and track information in the system for trends while posing little in the way of additional costs to registered parties. Comments also supported the idea of menu options provided as part of RMP\*Submit, to ease data entry and ensure consistency of reporting, and were generally in support of changing the term revised registration to de-registration. Comments questioning the proposed data element argued that the proposal fell short of explaining how it would enable EPA to know if facilities had adopted inherently safer or alternative technologies because it failed to distinguish between facilities that actually reduce hazards and facilities that merely recalculate vulnerabilities using different methodologies.

The Agency has decided to adopt the proposed data element because it will result in expedited review and evaluation of submitted RMP data, as well as better understanding and tracking of industry trends in the area of accident prevention and process safety, at very little cost to RMP sources. Certainly sources submitting a change to their RMP know the reason for the change; the new data element only requires them to specify that reason so implementing agencies need not review all the changes themselves to infer the reason. EPA also plans to

develop a pop-up menu listing the typical reasons for RMP changes (e.g., new submission; correction of the emergency contact or facility ownership data elements; update triggered by revised process hazards analysis; de-registration as a result of no longer using regulated substances at all or above threshold quantities) so that sources can easily indicate the reason for their change. To the extent the pop-up menu does not include a source's particular reason for a change, the source need only briefly state the reason for the change. In developing the pop-up menu, EPA plans to incorporate some of the specific suggested elements to better reflect the reasons behind RMP submissions and changes. In addition, EPA is changing the term revised registration to de-registration as comments agreed that this would be a useful clarification.

Although the Agency believes information about the reasons for changes will help identify and track industry trends, it does not intend to pressure industries to adopt particular changes. Facilities are in the best position to assess their hazards and how to address them. The Agency may choose to provide industry with analyses of the data so that it can be taken into account as individual facilities determine their best approach to process safety.

### **3. Contractor Information**

*EPA is amending the RMP rule by adding a mandatory data element for sources that use a contractor to prepare their RMPs to so indicate.*

Through RMP audits, implementing agencies have learned that many RMPs have been prepared in large part by contractors. Use of contractors for this purpose is allowed under the RMP rule. However, some implementing agencies have noted potential systemic errors in the way some contractors prepare RMPs. Concern has also been raised that, in some cases, sources whose RMPs are largely prepared by contractors have not properly implemented accident

prevention program elements at the source and are not sufficiently familiar with the contents of their RMPs. EPA proposed to require an additional data element in the RMP for sources who use a contractor to prepare their RMP to provide the name, address and phone number of that contractor, so that implementing agencies can more easily identify potential issues and provide appropriate follow-up.

Twelve comments indicated support for the proposal, while 16 opposed it. Supportive comments stated that this element would provide additional information that may help identify systematic or recurring errors in risk management programs and plans. A few state and local implementing agencies commented that they were aware of some contractors completing RMPs and supplying information to the facility without fully explaining the accident prevention program requirements or failing to even provide the facility with all of the required plan information. These agencies argued that knowing whether a contractor had assisted in RMP preparation and the name of that contractor would assist auditors in prioritizing inspections.

Other comments urged that enforcement actions related to RMP errors should be directed to the facility and not the contractor since facilities are responsible for the content of their RMPs whether the program is developed “in-house” or through use of a contractor. Concerns were also raised that EPA would assess and advertise the Agency’s judgement of specific technical consultants, or that somehow facility information or business relationships would be compromised if the Agency came between a client facility and its contractor.

The Agency agrees that adding the contractor information data element will provide valuable information to implementing agencies in identifying possible systemic errors without imposing significant burden on the reporting facility. The Agency also agrees with the

comments that the facility owner or operator is ultimately responsible for the RMP, whether or not it has been prepared by a contractor. However, implementing agencies have seen cases where contractors have been used to develop RMPs where no accident prevention program actually existed at the facility, or was not understood by personnel responsible for its implementation. Implementing agencies have also seen systemic errors in RMP submissions that can be linked to the same contractor. EPA believes it is important to require this piece of information to facilitate the review of RMPs by the implementing agencies, as well as to provide another measure of accountability on the part of the facility. The Agency is therefore adopting its proposal to require sources that use a contractor prepare their RMP to provide the name, address and phone number of that contractor. EPA recognizes that some sources utilize contract services to assist in developing portions of their risk management program, such as the process hazards analysis. The requirement to supply contractor information does not apply to such services; it applies only to contractors that prepare RMP submissions.

Contractor information will be used by implementing agencies to conduct further outreach and compliance assistance efforts. To the extent EPA identifies systemic errors or other problems potentially associated with a contractor, the Agency plans to contact the affected sources to alert them to the problem. EPA may also contact the contractor to discuss systemic problems and how to correct them; such discussions would focus not on particular RMP facilities but on the contractor's understanding and implementation of RMP requirements generally. The Agency would not enforce RMP requirements against a contractor, since those requirements apply only to owners and operators of covered sources. Also, EPA has no intention of listing or rating contractors in any way. The Agency considered the suggestion of making contractor



information an optional element, but it believes that a mandatory requirement will ensure the availability of useful information for program implementation, data quality, outreach and compliance assistance.

#### **D. Revisions to RMP\*Submit Format**

##### **Uncontrolled/Runaway Reactions**

*EPA is revising the RMP submission format (RMP\*Submit) to expand the list of possible causes of accidental releases reported as part of a source's five-year accident history so an owner or operator can indicate whether an accident involved an uncontrolled/runaway reaction.*

In its report, *Improving Reactive Hazard Management* (December 2002), the U.S. Chemical Safety and Hazard Investigation Board (CSB) recommended that EPA “[m]odify the accident reporting requirements . . . to define and record reactive incidents. Consider adding the term ‘reactive incident’ to the four existing ‘release events’ in EPA’s current 5-year accident reporting requirements (Gas Release, Liquid Spill/Evaporation, Fire, and Explosion). Structure this information collection to allow EPA and its stakeholders to identify and focus resources on industry sectors that experienced the incidents; chemicals and processes involved; and impact on the public, the workforce, and the environment” (CSB recommendation 2001-01-H-R4).

EPA, in agreement with the Board’s recommendation, proposed to revise RMP reporting of the five-year accident history (40 CFR 68.42) to allow the owner or operator to indicate whether the accident involved an uncontrolled/runaway reaction.

A total of 16 comments indicated support for expanding the list of possible causes of

accidental releases included in a source's five-year accident history so an owner or operator could indicate whether an accident involved an uncontrolled/runaway reaction. Comments suggested that the proposed change would allow sources to more accurately characterize an accident and would allow for a more detailed analysis of accident data. Comments supporting this data collection argued that not enough attention is being given to reactive chemical hazards and that the additional element would be an important, low-cost step towards accident prevention.

Twenty-three comments supported expanding the list of possible causes but recommended that EPA use a term other than uncontrolled/runaway reaction because the term could be subjectively interpreted, leading to inconsistent reporting and irrelevant data. Comments also recommended that the term be added to the drop-down menu already available under RMP\*Submit. Two comments opposed the proposed change, arguing that the proposed term is not consistent with the current list.

Overall, the comments confirm EPA's view that adding a new term for uncontrolled reactions will provide sources with an additional choice to more accurately report information about accidents and that this new information will provide a better understanding of the types of accidents occurring at regulated sources. This information will help the Agency identify incidents involving reactive chemicals and offer insights on how best to address that hazard category.

The Agency disagrees with comments that the new term is inconsistent with the current ones (gas release, liquid spill/evaporation, fire, and explosion), but does acknowledge that more than one term may describe a particular incident. In an effort to capture more specific accident

cause information, the Agency will modify RMP\*Submit to allow sources reporting accident information to select more than one of the categories from the list of accident causes.

The Agency recognizes the concern that the term *uncontrolled/runaway reaction* may perhaps be open to subjective interpretations. In response to this comment, the Agency will include a help function for this menu, with examples of the types of incidents that the Agency expects to be reported as uncontrolled/runaway chemical reactions. This revision to the RMP\*Submit format will provide the opportunity to gather more data on reactive incidents, in that way informing any future actions the Agency may take.

### **III. Other Issues**

#### **Collection of OSHA Occupational Injury and Illness Data in Conjunction with the RMP Filing Required under 112(r) of the CAA.**

EPA and others use the information reported in RMP accident histories in combination with other data to better understand accident risks and to gauge the trends with respect to risk and accident prevention across various industry sectors. Health and safety indicators could also provide information to industry, government, and other researchers in understanding the factors that affect chemical accident prevention. Under 29 CFR part 1904, the Occupational Safety and Health Administration (OSHA) requires employers to maintain logs of employee reportable injury and illness statistics (OII) for every calendar year. EPA considered of special interest three of these records: (1) Total Incidence Rate, (2) Workdays Lost to Injuries, and (3) Illness and Workdays under Restricted Duties. EPA requested comments on the practicability and burden of future RMP submissions if including data for these three records, aggregated for five most recent calendar years should be required. EPA did not propose this element.

Four comments indicated that they would support such a proposal, while 48 comments indicated that they would oppose it. Those in support of the additional elements argued that this information would enable EPA to better understand accident risks and to gauge the trends with respect to risk and accident prevention across various industry sectors, and that the ability to link employee illness with risks at the facility can lead to better prevention programs as well as providing data on safety standards. The comments opposing the collection of this data in conjunction with the RMP questioned both EPA's need for, and use of, the data. Comments argued that these OSHA reportable injuries are not necessarily or typically related to RMP chemicals or processes, and that because of this, misrepresentations and errors would result when trying to apply this data to EPA risk factors. The comments explained that injury and illness rates at a facility mostly involve ergonomic conditions, slips, trips and falls, hand lacerations, and automobile work-related accidents, which have no relation to RMP-listed chemicals. In short, OSHA data covers all accidents and illnesses, not just those related or located near an RMP-covered chemical process. Comments argued that the OSHA data would thus not aid in identifying safety trends or in statistical analyses of use to EPA. The argument was also made that OII data is already reported to the Federal government and available to EPA and further, that the collection of OSHA data does not fall within EPA's jurisdiction or authority under CAA section 112(r). Issues regarding the implementation of the proposed changes were also raised, including concerns that OII data may not be readily available for all facilities, that it would be time-consuming and that it would impose an undue burden on facilities.

The Agency recognizes the multiple issues that are associated with the collection of OSHA injury and illness data in conjunction with the RMP and appreciates the very detailed

comments received. As this was not a proposed element, the Agency will reserve judgement on whether and how to gather additional data, and will consider all comments if at a later time, it decides to propose additional RMP data elements for such information.

#### **IV. Effective Date, Update Clarification and Compliance Schedule**

Today's rule is being made effective immediately in order to relieve sources of the requirement to include an OCA description in the executive summaries of their RMPs. As explained previously, homeland security and law enforcement concerns have been raised about continuing to include OCA data in RMP executive summaries, which are not subject to the public access restrictions under CSISSFRRRA. Some sources may be in the process of updating or otherwise revising their RMPs, and EPA wants every source to be able to remove the OCA data in their executive summaries as soon as possible. The Agency finds good cause to make the rule effective upon promulgation because the rule relieves regulated entities from a requirement that has become problematic – describing OCA results in RMP executive summaries.

The rule's new reporting requirements apply as of June 21, 2004, the five-year anniversary for RMPs initially submitted by June 21, 1999. As an initial matter, EPA wants to make clear that sources that submitted their initial RMPs *before* the original June 21, 1999 deadline are required to submit the 5-year update of their RMPs *by* June 21, 2004, not before. (Sources that previously updated their RMPs as a result of a change at the facility will not be required to update their RMPs again until five years from the last update.) The 5-year update requirement in the RMP rule was written with the expectation that sources would submit their initial RMPs on or shortly before June 21, 2004. In reality, hundreds of sources submitted their initial RMPs months early, and may now be proceeding to update their RMPs by the five-year

anniversary of their original submission. EPA applauds early compliance with its requirements. However, in this instance, sources that complied early would be put at a disadvantage if their five-year update requirement were based on the date of their initial submission. Such sources could be faced with submitting an updated RMP that still includes OCA data and that lacks some of the newly required data elements. If these sources submitted such an RMP, they would have to submit revised RMPs that removed the OCA data (unless they chose to retain it) and included the new data under the today's rule. Any OCA data that had been submitted as part of the update, moreover, would remain part of EPA's official records. The Agency is therefore clarifying that the rule's 5-year update provision requires that RMPs initially due on June 21, 1999 be updated by June 21, 2004, not before. Early filers that received an EPA letter acknowledging receipt and indicating an update deadline prior to June 21, 2004, should disregard that date, which was calculated without consideration of potential early filings, and instead submit their 5-year update by June 21, 2004.<sup>1</sup>

In light of the clarification above, EPA anticipates that the vast majority of RMPs initially submitted by June 21, 1999 will be updated and submitted to the Agency on or close to June 21, 2004. EPA has therefore selected June 21, 2004 as the start date for complying with the new reporting requirements established by today's rule. Accordingly, as of June 21, 2004, all current RMPs on file with EPA must include the new emergency contact, contractor, and RMP submission information required by today's rule. EPA therefore recommends that RMP updates

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<sup>1</sup>Any source that has submitted an update prior to issuance of today's rule may request to have its update returned and may use the June 21, 2004 date as the deadline for its update. An update that is returned upon such a request would not be retained as part of EPA's official records.

now being prepared include this information by the time they are submitted on or before June 21, 2004. RMP updates submitted prior to June 21, 2004 without this information will have to be corrected to include this information by June 21, 2004. RMPs not being updated by June 21, 2004 will also have to be corrected to include this information by the June 21, 2004 deadline. As discussed above, EPA plans to have in place an Internet-based system for adding this information that should reduce the burden of having to supply the information separate from any RMP update.

The June 21, 2004 start date also applies to the new requirement to include in RMP accident histories information about reportable accidents within six months of the accident. Any accidental release meeting accident history reporting criteria and occurring after promulgation of this rule will need to be added to the source's RMP accident history within six months of the accident or by the time the source is required to update its RMP (which requires an update of the source's accident history), whichever is earlier.

## **V. Technical Corrections**

The original RMP rule published in January of 1994 contains a provision, §68.2, effectively staying the rule for several years for certain types of sources. EPA later amended the rule to exclude these types of sources from the rule's coverage altogether. See 61 FR 31731 (June 20, 1996), and 64 FR 29170 (May 28, 1999). The time period of the stay lapsed in 1997 and 1999 (depending on the type of source affected). Moreover, the need for a stay was eliminated with the rule changes. EPA is therefore rescinding §68.2, since its presence in the regulations continues to cause confusion about their applicability.

Several provisions of the original RMP rule refer to June 21, 1999 for purposes of

identifying the correct method and format for submitting RMPs to EPA (see §§68.150(a) and 68.190(a)). That date was appropriate for initial RMPs that were due on June 21, 1999, but with today's rule it no longer makes sense. EPA is thus changing those provisions to reflect that sources should use the method and format for submitting RMPs that EPA has specified by the date of submission.

## **VI. Summary of the Final Rule**

EPA is amending several sections of part 68 of title 40 of the Code of Federal Regulations.

Section 68.2 is deleted as the period for these stayed provisions has expired and final actions on these were taken at 61 FR 31731 on June 20, 1996, and at 64 FR 29170 on May 28, 1999.

Section 68.150, Submission, is amended to reflect the new reporting schedule requirements.

Section 68.155, Executive Summary, is amended to remove the requirement for sources to briefly describe the off-site consequence analysis (i.e., worst-case accidental release scenario(s) and the alternative accidental release scenario(s)) within the executive summary of the RMP.

Section 68.160, Registration, is amended to require reporting of (1) the e-mail address for the emergency contact, if such an address exists, (2) the name, address and phone number of any contractor who helped in preparing the source's RMP; and (3) the type of and reason for any RMP submission changing or otherwise affecting the previously submitted RMP. The section is also amended to allow for optional reporting of the e-mail address of the person responsible for



the RMP elements and implementation.

Section 68.190 is amended to clarify that sources that submitted their RMPs prior to June 21, 1999 (the initial deadline for submitting RMPs) are not required to submit a five-year update of their RMPs before June 21, 2004; to reflect the periodic nature of the five-year update requirement; and to change the *revised registration* reference to *de-registration*.

Section 68.195, Corrections, is added. This new section requires sources to submit revised RMP accident history and incident investigation elements within six months of an accidental release that meets the five-year accident history reporting criteria. Sources are also required to submit a correction to the RMP emergency contact information within one month of any changes.

## **VII. Judicial Review**

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this action. Under section 307(b) (2) of the CAA, the requirements that are the subject of today's action may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

## **VIII. Statutory and Executive Order Reviews**

### **A. Executive Order 12866: Regulatory Planning and Review**

Under Executive Order 12866, (58 Federal Register 51,735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) have an annual effect on

the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB notified EPA that it considered this a “significant regulatory action” within the meaning of the Executive Order. EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

## **B. Paperwork Reduction Act**

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The information collection requirements are not enforceable until OMB approves them. The Information Collection Request (ICR) document has been assigned EPA ICR number 1656.11.

EPA is modifying the re-submission schedule under the risk management program for sources who have significant accidents and for those who change the information for the emergency contacts. EPA is adding three mandatory data elements and an optional data element to the RMP. EPA is removing the regulatory requirement to discuss the off-site consequence analysis (OCA) data in the executive summary of the RMP.

Two commenters opposed Agency's estimates in the ICR (1656.10) developed for the proposed rule (68 FR 45124). Commenters argued that EPA underestimated the burden associated with one of the elements proposed, the re-submission of the RMP within six months of the date of the accident. Based on the data included in the 1999 RMP submissions from 15,000 facilities, only 55 facilities have reported multiple accidents in the five-year accident history section of their RMPs. EPA assumed that only these facilities will be affected by the re-submission schedule due to frequent accidents. Most of these 55 are facilities with Program 3 processes, which are already covered by the OSHA Process Safety Management (OSHA PSM) Program. OSHA already requires facilities under the PSM program to conduct accident investigation. There is no additional burden under the risk management program for conducting accident investigations for these facilities, except for reporting the accident history elements specified in the risk management plan. The recent ICR renewal approved by OMB (ICR No. 1656.09) already accounted burden estimates for resubmitting RMP in June 2004. The estimates in the ICR developed for this final rule is only for the changes made to the regulations.

EPA has made reasonable estimates for the changes made in this final rule. To become familiar with this rule, it is estimated that it will take only 2.0 hours for each facility. To report new data elements, EPA estimates that it will take 0.25 hours for each facility. To report accident history elements within six months of the accident, the burden is estimated to range from 3.0 hours for wholesale to 9.0 hours for large chemical manufacturers. For those facilities that may have changes in their emergency contact information, the reporting burden is estimated to be 0.10 hours for each facility. For 14,930 facilities that are currently subject to part 68, this rule change will increase a burden of 33,943 hours annually (101,829 hours for three years) at a

cost of \$992,400 annually (\$2,997,200 for three years).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the Federal Register to display the OMB control number for the approved information collection requirements contained in this final rule.

### **C. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq., generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small

governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) a small business that is defined by the Small Business Administration by category of business using North American Industrial Classification System (NAICS) and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Since today's rule only revises several reporting requirements of the RMP rule, its economic impact on regulated entities is addressed by the Paperwork Reduction Act section of this document. After considering the relatively minor economic impacts of the final rule on small entities, we have concluded that this action would not have a significant economic impact on a substantial number of small entities.

#### **D. Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory

alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this final rule would not contain a Federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. The nationwide capital cost for these rule amendments is estimated to be zero and the annual nationwide costs for these amendments are estimated to be less than \$1 million. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Act. EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments. The new data elements and submission requirements would impose only minimal burden on these entities.

#### **E. Executive Order 13132: Federalism**

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation.

This final rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The final rule focuses on requirements for regulated facilities without affecting the relationships between governments in its implementation. Thus, Executive Order 13132 does not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with State and local officials and implementing agencies in developing this rule. EPA held a RMP Implementing Agency meeting in Atlanta, October 21 and 22, 2002. State and local implementing agencies in attendance included representatives from Alabama, California, Colorado, Delaware, Florida, Georgia,

Hawaii, Iowa, Kentucky, Louisiana, Mississippi, New Jersey, North Carolina, Ohio, Pennsylvania, and South Carolina. Participants were invited to provide feedback regarding the program and related software, as well as suggestions for improvements.

#### **F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments**

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This final rule does not have tribal implications, as specified in Executive Order 13175. The final rule focuses on requirements for all regulated sources without affecting the relationships between tribal governments in its implementation, and applies to all regulated sources, without distinction of the surrounding populations affected. Thus, Executive Order 13175 does not apply to this rule.

#### **G. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks**

The Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be economically significant under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives



considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it does not involve regulatory decisions that are based on public health or safety risks, nor would it establish environmental standards intended to mitigate health or safety risks.

**H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use**

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

**I. National Technology Transfer and Advancement Act**

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This final rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

## **J. Congressional Review Act**

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A Major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective [insert date of publication in the Federal Register].

### **Lists of Subjects in 40 CFR Part 68**

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: Sec. 112(r) of the Clean Air Act

Dated: March 31, 2004.

Michael O. Leavitt, Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 68 of the Code of Federal Regulations is amended to read as follows:

#### **PART 68--CHEMICAL ACCIDENT PREVENTION PROVISIONS**

1. The authority citation for part 68 is revised to read as follows:

Authority: 42 U.S.C. 7412(r), 7601(a)(1), 7661-7661f.

Subpart A – [Amended]

2. Section 68.2 is removed.

Subpart B– [Amended]

3. Section 68.42 is amended to revise paragraph (b)(11) to read as follows:

**§68.42 Five-year accident history.**

\* \* \* \* \*

(b) \* \* \*

(11) Operational or process changes that resulted from investigation of the release and that have been made by the time this information is submitted in accordance with §68.168.

\* \* \* \* \*

Subpart G – [Amended]

4. Section 150 is amended to redesignate paragraphs (c) through (e) as paragraphs (d) through (f), to add a new paragraph (c), and to revise paragraph (a) and newly designated paragraph (d) to read as follows:

**§68.150 Submission.**

(a) The owner or operator shall submit a single RMP that includes the information required by §§68.155 through 68.185 for all covered processes. The RMP shall be submitted in the method and format to the central point specified by EPA as of the date of submission.

\* \* \* \* \*

(c) The owner or operator of any stationary source for which an RMP was submitted before June 21, 2004, shall revise the RMP to include the information required by §68.160(b)(6) and (14) by

June 21, 2004 in the manner specified by EPA prior to that date. Any such submission shall also include the information required by §68.160(b)(20) (indicating that the submission is a correction to include the information required by §68.160(b)(6) and (14) or an update under §68.190).

(d) RMPs submitted under this section shall be updated and corrected in accordance with §§68.190 and 68.195.

\* \* \* \* \*

4. Section 68.155 is amended to remove paragraph (c) and redesignate paragraphs (d) through (g) as paragraphs (c) through (f).

5. Section 68.160 is amended to revise paragraphs (b)(5) and (b)(6), redesignate paragraphs (b)(14) through (b)(18) as paragraphs (b)(15) through (b)(19), and to add new paragraphs (b)(14) and (b)(20) to read as follows:

**§68.160 Registration.**

\* \* \* \* \*

(b) \* \* \*

(5) The name and title of the person or position with overall responsibility for RMP elements and implementation, and (optional) the e-mail address for that person or position;

(6) The name, title, telephone number, 24-hour telephone number, and, as of June 21, 2004, the e-mail address (if an e-mail address exists) of the emergency contact;

\* \* \* \* \*

(14) As of June 21, 2004, the name, the mailing address, and the telephone number of the contractor who prepared the RMP (if any);

\* \* \* \* \*

(20) As of June 21, 2004, the type of and reason for any changes being made to a previously submitted RMP; the types of changes to RMP are categorized as follows:

(i) Updates and re-submissions required under §68.190(b);

(ii) Corrections under §68.195 or for purposes of correcting minor clerical errors, updating administrative information, providing missing data elements or reflecting facility ownership changes, and which do not require an update and re-submission as specified in §68.190(b);

(iii) De-registrations required under §68.190(c); and

(iv) Withdrawals of an RMP for any facility that was erroneously considered subject to this part 68.

6. Section 68.190 is amended to revise paragraphs (a), (b)(1) and (c) to read as follows:

**§68.190 Updates.**

(a) The owner or operator shall review and update the RMP as specified in paragraph (b) of this section and submit it in the method and format to the central point specified by EPA as of the date of submission.

(b) \* \* \*

(1) At least once every five years from the date of its initial submission or most recent update required by paragraphs (b)(2) through (b)(7) of this section, whichever is later. For purposes of determining the date of initial submissions, RMPs submitted before June 21, 1999 are considered to have been submitted on that date.

\* \* \* \* \*

(c) If a stationary source is no longer subject to this part, the owner or operator shall submit a de-registration to EPA within six months indicating that the stationary source is no longer covered.

7. Section 68.195 is added to subpart G to read as follows:

**§68.195 Required corrections.**

The owner or operator of a stationary source for which a RMP was submitted shall correct the RMP as follows:

(a) New accident history information – For any accidental release meeting the five-year accident history reporting criteria of §68.42 and occurring after [insert date of publication of this final rule], the owner or operator shall submit the data required under §§68.168, 68.170(j), and 68.175(l) with respect to that accident within six months of the release or by the time the RMP is updated under §68.190, whichever is earlier.

(b) Emergency contact information – Beginning June 21, 2004, within one month of any change in the emergency contact information required under §68.160 (b)(6), the owner or operator shall submit a correction of that information.